

ADAM PAUL LAXALT
Attorney General



WESLEY K. DUNCAN
First Assistant Attorney General

NICHOLAS A. TRUTANICH
First Assistant Attorney General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701
December 13, 2016

Sent via U.S. Mail

Carlos McDade
Office of the General Counsel
Clark County School District
5100 West Sahara Ave.
Las Vegas, Nevada 89146

**Re: Response to NRS 233B.100(1) Petition to Reopen the
Regulation-Making Process**

Dear Mr. McDade:

Pursuant to NRS 233B.100, Clark County School District (the "District") requested the State Board of Education (the "Board") reopen the regulation making process related to Legislative Counsel Bureau (LCB) File No. R142-16, or state the reason for denial of its Petition to Reopen the Regulation-Making Process (the "Petition") in writing. The Board declines to re-open the regulation making process and thus denies the District's Petition. Below please find a summary of reasons for denying the Petition. It is important to note that the Board has, on numerous occasions, stated a clear intent to monitor the implementation of the reorganization and, once implemented, consider revisions to the Regulation in order to be responsive to evidence from the field.

This explanation of the denial as required by NRS 233B.100 has not undergone the workshop or regulation hearing process and is not intended to supplement, further explain, or clarify the regulation in question. It is provided, as required by statute, as reasons supporting the denial of your request to re-open the regulation-making process.

The District's Issues Supporting Re-Opening of the Regulation-Making Process

I. Assembly Bill (AB) 394 Authorizes the Board to Take the Additional Time Needed to Promulgate an Effective Regulation and Ensure a Smooth Transition

The Board's directive from AB 394 of the 2015 Legislative Session was to adopt regulations necessary and appropriate to effectuate a plan and recommendation to reorganize the District approved by the Legislative Advisory Committee (Advisory Committee). The Board was not empowered to alter or reject the Legislative Advisory Committee's Plan and Recommendations (the "Plan").

The Plan for the reorganization of the District was established and approved unanimously by the Advisory Committee to develop a plan to reorganize the District following twenty-six public meetings that were held by the Advisory Committee, the Technical Advisory Committee, and the Clark County Board of County Commissioners.

The fact that the Board was able to adopt the required regulations ahead of schedule in no way infringes upon their legality or their prudence. Additional time was given by the Legislature but not required. The Board acted quickly to implement the Plan so that legislative intent could be implemented as quickly as possible. The quick passage of the implementing regulations is a laudable achievement, not a reason to re-open the regulation process.

II. Substantive Concerns with the Regulation

A. Scope of the District Board's Authority

This section of the District's Petition is an introduction to the substantive arguments addressed in the following sections and need not be responded to.

B. Student Equity and Civil Rights Issues

The District provides a significant list of functions that it maintains and should remain the responsibility of central services. Only the functions specifically delineated in Section 14(2) of R142-16 are required to be transferred to local school precincts. In addition, certain services listed in Section 14(3) of R142-16 may not be transferred except pursuant to Subsection 7. Activities or functions not specifically delineated in 14(2) may only be transferred under the provisions of R142-16 Section 14(7). The ability to transfer any additional functions other than those listed in Subsection 2 lies completely within the control of the District, its Superintendent, and Board of Trustees. Additionally the District's Board and Superintendent are expressly prohibited from transferring any function prohibited by law. If the District's concerns regarding the legality of the delegation of this authority are correct, the Regulation already prevents delegation of the duty in question.

C. Funding Issues

1. The 80-85% Rule

The Board's directive from AB 394 of the 2015 Legislative Session was to adopt regulations necessary and appropriate to effectuate the Plan to reorganize the District approved by the Advisory Committee. The Board was not empowered to alter or reject the Advisory Committee's Plan. Page 7 of the Plan to reorganize the District states that budgets for central services shall be based on zero-based budgeting with a minimum threshold of eighty to eighty-five percent (80-85%) of the previous year's budget as the base. Individual stand-alone incremental packages not exceeding ten percent (10%) may be added on top of that budget. The Board's regulations must be consistent with the adopted plan.

No evidence supporting the Petition shows that these numbers are not appropriate - a material oversight given the District's ready access to their historic revenue and expenditures. Significant discussion occurred as reflected in the Advisory Committee's August 16, 2016 Meeting Minutes with testimony indicating the 80-85% numbers. The 80-85% numbers are consistent with the Advisory Committee's Plan. The District also retains

some flexibility with the services that it may delegate to the local precincts, so in the event that it determines that 80-85% is more than necessary for the services that must be transferred under Section 14(2) of R142-16, it retains

the ability to transfer additional authority under Section 14(7). Similarly, if the District determines that 80-85% is not enough, the District may send additional money to the local precincts as the 80-85% is a minimum.

2. Weighted Funding

Section 17(1) of R142-16 requires the District to allocate money based on a Weighted Funding Formula. Those weights must be the same weights established by the Department of Education (the "Department") for the State Funding Formula. Presently, the Department has established a weight for students with disabilities. However, in the event that the District wishes to use weights different from those weights used by the Department, it can submit a request for a variance to use a different weight or distribution of weights.¹ The lack of Department established-weights for three of the four categories of pupils does not prevent the District from complying with Section 17(1) as the use of variances protects the District's right to proceed with a weighted funding formula without statewide numbers. Indeed, Section 17 establishes a means by which funding is allocated and is not contingent upon additional appropriation or state-wide weights established by the Department.

3. Funding the Reorganization

AB 394 created the Advisory Committee to develop a plan and recommendations to reorganize the District and to study the distribution of funds on public school financing. Nothing in AB 394 requires the Advisory Committee to dissolve or cease its function once the plan is developed and the Board has enacted the regulations required by Section 28(4) of AB 394. The Advisory Committee's Plan (the "Plan") clearly understood the obligation to continue oversight of the process and recommended that the advisory committee continue to receive reports and other information to assist with this oversight.² This recommendation is consistent with the Advisory Committee's legislative mandate under AB 394, Section 25. With regard to

¹ Section 17(3) of R142-16.

² Plan to Reorganize the District, page 9.

the cost of implementation of the Plan, the Plan also clearly states that the implementation should be cost neutral and that the cost oversight can be funded with resources reallocated from within the District.³

The Advisory Committees recommendation for continued oversight and support for the District during the transition process is consistent with the implementation challenges that the District has noted in correspondence to the Department. For instance, the District continues to have questions regarding its obligations under the reorganization plan and regulation, some of which are raised in this Petition, and others are raised in correspondence with the Department.⁴

D. Student Achievement Issues

School Associate Superintendents are obligated to perform several tasks including training and supervision of principals, reviewing and approving of plans of operation, assisting to the principals in revising plans of operations and ensuring that local precincts are in compliance with the federal, state and local laws.⁵ The Associate Superintendent's oversight of the local precincts as described in Section 20, supervisory role that the Associate Superintendent has over school principals in Section 21 and obligation to review approve and assist in revising the Plan for improvement is consistent with the accountability described in Section 21(2). Principals are evaluated based on the Nevada Educator Performance Framework (NEPF), which includes student outcomes. Associate Superintendents do not fall under the NEPF. Therefore, the provision in the regulation increases accountability for student achievement.

E. Personnel and Staffing Issues

There is no prohibition on non-district personnel participating in the interviewing of candidates for Associate Superintendent Positions as described by Section 20 of R142-16. Nor is there a prohibition on an

³ Plan to reorganize the District, page 8.

⁴ The District's letter of November 30, 2016 regarding confusion over its obligation to implement Student Weights, notwithstanding the lack of statewide weights.

⁵ R142-16 Sections 21.

organizational team member participating in interviews of the hiring of school principals under Section 27. The Plan's central tenet is to encourage decision making affecting local schools to be done at the local level when possible. The interview and hiring decisions are some of the most important decisions affecting school improvement and the District's proposal to exclude community personnel from the interview process is contrary to the intent of the reorganization Plan adopted by the Advisory Committee.

The District's concerns regarding overrepresentation of employees with membership in an association representing licensed personnel is misplaced. No evidence was included in the Petition demonstrating that this provision is unworkable or unachievable. Section 25 of R142-16 preserves the voices of employees who are members of an association as well as those who are not. Additionally, support staff will be represented on every organizational team as described by Section 25(c) of R142-16. The need to have multiple voices representing any one population must be balanced against the ability to have school organization teams' function effectively. The existing regulatory language strikes this balance.

The District's request to clarify that the authority transferred to local school precincts under Section 14(2) is being transferred to the principal is unnecessary. It is clear these powers are delegated to the school principal under Section 23(2).

The District's request to have the principal serve as a voting member of the organizational team is unnecessary. The school principal will fully participate in meetings, but the Petition includes no evidence or argument indicating how the team would function more effectively if the principal were transformed into a voting member. The organization team serves an important function and should meet monthly as required by Section 26(5) of R142-16. The District's request does not indicate why monthly meetings of the organization team would be harmful.

There is no information provided showing that quarterly reports provided to city and county governing boards from Associate Superintendents will be a disruptive burden. Associate superintendents are likely to be assigned schools within limited geographic ranges, meaning that an Associate Superintendent will likely not have a significant number of boards to report to thus keeping their reporting obligations manageable.

F. Procurement and Budgeting Issues

The District's request to insert language clarifying that applicable state procurement laws bind local precincts is unnecessary. Applicable laws must be followed. Section 16(1) of R142-16 requires the Superintendent establish only the anticipated total to be received by the District from all sources, including carry forward. Anticipated amounts are understood to be based on best available evidence.

The District's request to establish a timeline for local precincts to request services, supplies and equipment need not be accomplished through a regulatory change, but could be established by a District policy regarding such requests.

Conclusion

The District's request to reopen the regulatory process is denied for the preceding reasons. Your request to pass upon the validity of R142-16 under NRS 233B.110 shall be addressed in separate correspondence.

Sincerely,

GREGORY D. OTT
General Counsel
Board of Education
Tel: (775) 684-1229
Email: Gott@ag.nv.gov